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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,076	01/25/2001	Michael D. Krysiak	P/35-4	7143

7590 06/09/2003

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GARDEN CITY, NY 11530

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8k

Office Action Summary

Application No.

09/769,076

Applicant(s)

KRYSIK ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 1-25, 36, 37, 39-42, 45, 46, 48, 49, 51, and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-30, 38, 47, 50 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of group III, claims 26-30, 32, 38, 50, 52, and 47) in Paper No. 16 is acknowledged.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- 1.) None of the reference signs were mentioned in the specification.

Correction is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mulch must be shown or the feature(s) canceled from the claim(s), none of the figure flow charts nor the Brief Description of Drawings section of the specification identify mulch. No new matter should be entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-30, 38, 50, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens in view of U.S. Patent No. 4,126,417 to Edwards.

Regarding Claim 26 and 50, Stevens teaches a colored mulch product (Stevens abstract and Col. 6 line 35) consisting essentially of a material comprising a fiber cellulose, clay, loam, sand and/or combination; a binding agent; a dye and/or pigment;

Stevens does not explicitly teach that the dye indicates to a user environmental conditions of soil where the mulch is placed and the color fades or disappears in response to a lack of nutrient or fertilizer in the mulch. However, Stevens teaches that the mulch product contains fertilizer (Stevens Col. 4 line 50 and abstract) and Edwards teaches that it is old and notoriously well-known in the art to color fertilizer (Edwards Col. 4 line 12). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Stevens with the teachings of Edwards for the reasons set forth by Edwards (Edwards Col. 1 line 27-28). This modification inherently teaches that the mulch color changes as the fertilizer, which is one component of the overall mulch product, penetrates the soil since the color of the fertilizer fades indicating a lack of nutrient in the mulch.

Regarding Claim 27, Stevens as modified teaches nitrogen, phosphorous, and potassium fortifiers (Stevens abstract last line).

Regarding Claims 28-30, the dye indicates to the user the acidity of the soil; dye indicates to a user the moisture content of the soil; the chemical content of the soil

Regarding Claim 38, Stevens as modified teaches the mulch is the same or similar color of an actual plant, flower, fruit, or vegetable of a seed planted to the mulch (Stevens Col. 6 line 37).

Regarding Claim 52, Stevens as modified inherently teaches a method for adjusting the chemical content of soil by placing a colored mulch on top of the soil (Stevens abstract); changing colors of the mulch based on condition of the soil; adding chemicals to the soil based on the color of the mulch (Edwards teaches that additional nutrients are required when previous applications have been depleted Col. 4 line 55-58).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,324,781 to Stevens

Regarding Claim 47, Stevens teaches a colored mulch product comprising a material of a fiber, cellulose, clay, loam, or sand and/or a combination of the same; a binding agent; and a dye and/or pigment (Stevens abstract), but is silent on the colored mulch product produced by an agglomeration operation. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice of selecting an alternate equivalent old and well-known means of manufacturing that is notoriously well-known for use in manufacturing fertilizers and is commonly used for application of a binding and coloring agent to an object. One of ordinary skill in the art would modify the teachings with this known equipment for an efficient means of manufacturing the fertilizer and for thoroughly coating the cellulosic material with binding agent and dye.

Response to Arguments

Applicant's arguments with respect to claims 26-30, 38, 47, 50, and 52 have been considered but are moot in view of the new ground(s) of rejection.

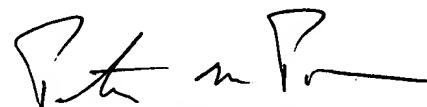
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV
June 4, 2003



PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600